

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:17-CR-84-BR
No. 7:19-CV-35-BR

DARIUS J. WILLIAMS,)	
)	
Petitioner,)	
)	
v.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the court on the government’s motion to dismiss petitioner’s 28 U.S.C. § 2255 motion, (DE # 60), and petitioner’s motion to amend his § 2255 motion, (DE # 53). Petitioner filed a response in opposition to the government’s motion. (DE # 69.) The government did not file a response to petitioner’s motion to amend.

Rule 15 of the Federal Rules of Civil Procedure governs amendment of a § 2255 motion. See United States v. Pittman, 209 F.3d 314, 317 (4th Cir. 2000) (“[C]ourts have typically applied Federal Rule of Civil Procedure 15 to the amendment of a § 2255 motion.” (citations omitted)). Because the government has filed a motion to dismiss, petitioner is not entitled to amend his § 2255 motion as of right; nonetheless, the court is obligated to “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). There appears to be no prejudice to the government by allowing amendment. See Pittman, 209 F.3d at 317. Therefore, the court deems petitioner’s amended § 2255 motion properly filed. (See Am. Mot., DE # 68.) The amended § 2255 motion supersedes the original § 2255 motion, see Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001) (“The general rule . . . is that an amended pleading supersedes the

original pleading, rendering the original pleading of no effect.”); Eaglin v. United States, No. 3:04-CR-0547-MBS, 2011 WL 489969, at *3 (D.S.C. Feb. 7, 2011) (“The Amended Motion to Vacate served to supersede and replace the original Motion to Vacate. Thereafter, the original Motion to Vacate did not perform any function . . .”), and moots the government’s motion to dismiss.

For the foregoing reasons, petitioner’s motion to amend is ALLOWED. The United States Attorney is DIRECTED to file an answer pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the amended § 2255 motion within 30 days. The government’s motion to dismiss petitioner’s original § 2255 motion is DENIED as moot.

This 23 July 2019.



W. Earl Britt
Senior U.S. District Judge